

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

IRVIN MORENO,

Petitioner,

vs.

RICHARD B. IVES,

Respondent.

Case No. 3:18-cv-00505-JR
OPINION AND ORDER

AIKEN, Judge:

Petitioner Irvin Moreno has filed a motion under Federal Rule of Civil Procedure 59(e) seeking reconsideration of this Court’s June 26, 2018 Order and Judgment (doc. 11) dismissing his § 2241 habeas action for lack of jurisdiction.

Reconsideration under Rule 59(e) is “appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J, Multnomah County v. ACanS, Inc.*, 5 F.3d 1225, 1263 (9th Cir. 1993). Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)


(internal quotation marks omitted). “A Rule 59(e) motion may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” *Id.* (emphasis in original).

Petitioner argues that this Court committed clear error by misconstruing the issue presented in this case. Petitioner asserts that the order failed to recognize that his claim challenges the Bureau of Prison’s (BOP) interpretation of 18 U.S.C. § 3584(c) and, instead, erroneously focused on the BOP’s interpretation of 28 C.F.R. § 550.55(b)(5)(ii). But the BOP’s determination that petitioner was ineligible for a sentence reduction was not based on an interpretation of § 3584(c). As the order explained, the BOP based its determination on its interpretation of the phrase “current” conviction in 28 C.F.R. § 550.55(b)(5), and that interpretation was an exercise of discretion under 18 U.S.C. § 3621(e)(2)(B), which is not subject to judicial review. *Reeb v. Thomas*, 636 F.3d 1224, 1228 (9th Cir. 2011). Therefore, this Court’s decision was not error.

For the reasons set forth above, petitioner’s Motion to Alter or Amend the Judgment (doc. 13) is DENIED.

IT IS SO ORDERED.

Dated this 27th day of September 2018.



Ann Aiken
United States District Judge